IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21-8-2006

Coram:

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.8471 of 1998

The Management of Tamilnadu,
Electricity Board,
791, Anna Salai,
Chennai - 600 002. ... Petitioner

Vs.

1. The Presiding Officer,
I Additional Labour Court,
Chennai.

2. M.Ganesan ... Respondents

Writ petition filed under Article 226 of Constitution of India, praying this Court to issue a writ of certiorarified mandamus calling for the records of the first respondent in I.A.No.508 of 1997 in I.D.No.245 of 1988 and quash its order dated 26.11.1997 and direct the first respondent to frame the issue as to whether the second respondent would fall within the definition of workman under Sec.2(s) of the Industrial Disputes Act along with other issues to be tried viz., whether the domestic enquiry held against the second respondent was fair and proper.

For Petitioner : Mr.T.S.Gopalan
1st Respondent : Court
For 2nd Respondent : Mr.A.R.Gokulnath

O R D E R

Prayer in the writ petition is to quash the order in I.A.No.508 of 1997 in I.D.No.245 of 1988 dated 26.11.1997 on the file of the first respondent/Labour Court and to direct the first respondent/Labour Court to frame the issue as to 'whether the second respondent would fall within the definition of "workman" under section 2(s) of the Industrial Disputes Act, 1947' along with other issues to be tried.

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2. The brief facts necessary for disposal of the writ petition are as follows.

(a) The second respondent herein joined in the service of the Tamil Nadu Electricity Board in the year 1970 and he was lastly employed as an Assistant Engineer (Electrical) O&M East, Sivagiri, Periar Electricity System and it was a gazatted post. While the second respondent was employed as Assistant Engineer, a disciplinary action was initiated against him for certain acts of misconduct and based on the findings in the enquiry, he was dismissed from service by order dated 4.4.1985. The aggrieved second respondent filed appeal before the Chairman of Tamil Nadu Electricity Board and the same was dismissed on 20.10.1986.

(b) Thereafter the second respondent raised an industrial dispute and the same was referred in G.O.Ms.No.1216 dated 8.6.1988 for adjudication to find out as to whether the non-employment of the second respondent was justified. The second respondent filed Claim Statement in December, 1988, and the petitioner/Management filed counter statement in March, 1989. In the counter statement the petitioner/Management raised the contention that the second respondent having been employed as Assistant Engineer (Electrical), a gazatted post, he will not come within the definition of "workman" as defined under section 2(s) of the Industrial Disputes Act, 1947, apart from raising the defence on merits.

(c) While the dispute was pending, petitioner/Management filed I.A.No.508 of 1997 on 7.7.1997 and raised the preliminary issue as to 'Whether the second respondent is a "workman" within the definition of section 2(s) of the Industrial Disputes Act, 1947' and it was contended that in the event of the Labour Court holding that the second respondent is not a "Workman" within the meaning of section 2(s) of the Industrial Disputes Act, 1947, none of the other issues need be considered on merits and thereby valuable time of the Court can be saved.

(d) The second respondent filed a counter affidavit in the interlocutory application and contended that the petitioner/Management having appeared before the Conciliation machinery, it should be taken that the petitioner/Management had accepted the second respondent's status as "Workman" under the Industrial Disputes Act, 1947, and therefore there is no necessity to try the said issue as a preliminary issue. It is also specifically stated that the petitioner/Management having participated in the Conciliation proceeding, it is estopped from raising the preliminary issue.

(e) The Labour Court considered the said contentions and on 26.11.1997 ordered that the request of the petitioner/Management to give a finding on the preliminary issue is not justified since the petitioner participated in the Conciliation proceeding and the disciplinary proceeding having been initiated under the Standing Orders, petitioner/Management accepted the second respondent's

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status as "Workman" and hence there is no necessity to decide the preliminary issue. As against the said order, the present writ petition has been filed.

3. The second respondent filed a counter affidavit contending that since the petitioner/Management had proceeded under the Standing Orders in respect of the workmen, other than those engaged in clerical work, the second respondent is to be treated as "workman" as defined under the Industrial Disputes Act, 1947 and the same was the stand taken by the petitioner/Management before the Conciliation Officer and therefore the first respondent/Labour Court is justified in dismissing the interlocutory application.

4. The learned counsel for the petitioner relied on the following decisions to show that the Labour Court has no jurisdiction to entertain the claim petition, other than from a workman.

(i) 1957 (2) LLJ 1 (SC)
(Newspapers Ltd. v. Industrial Tribunal, Uttar Pradesh and others);

(ii) 2004 (4) LLN 753 (SC) (Mukesh K.Tripathi v. Senior Divisional Manager, Life Insurance Corporation and others); and

(iii) 1993 (1) LLN 169 (Edwin A. Daniel and another v. Labour Court, Coimbatore and another).

Learned counsel also contended that even though a reference was made by the appropriate Government to adjudicate the issue, it is open to the Management to contend that the same is not triable because the Claimant is not a workman.

5. The learned counsel appearing for the second respondent submitted that in the decision reported in 1996 (1) LLJ 67 (S.A.Sarang v. W.G.Forge & Allied Industries Ltd & Others), the Bombay High Court held that if an employer proceed against an employee under the Standing Orders, it is presumed that the employee is a "workman" within the meaning of the Act and therefore the first respondent/Labour Court is justified in dismissing the interlocutory application.

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6. I have considered the rival submissions of the learned counsels appearing for the petitioner as well as the second respondent.

7.(i) In the decision reported in 1957 (2) LLJ 1 (Newspapers Ltd. v. Industrial Tribunal, Uttar Pradesh and others), the Honourable Supreme Court held thus,

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"In spite of the fact that the making of a reference by the Government under the Industrial Disputes Act is the exercise of its administrative powers, that is not destructive of the rights of an aggrieved party to show that what was referred was not an 'industrial dispute' at all and therefore the jurisdiction of the Industrial Tribunal to make the award can be questioned, even though the factual existence of a dispute may not be subject to a party's challenge. State of Madras v. C.P.Sarathy [(1953) S.C.R. 334, 347 = 1953-I L.L.J. 174].

It may also be noted that the notification issued by the Uttar Pradesh Government on 3 January 1953 already quoted proceeds on the assumption that a dispute exists between the "employer and his workmen". The points of dispute in the reference, however, comprise the wrongful termination of the service of only Tajammul Hussain a lino operator. The words used in the first part of the notification show that the Government was labouring under the misapprehension that this dispute was between the employer on the one hand and his workmen on the other, which, in fact it was not. Tajammul Hussain could not be termed workmen (in the plural) nor could the Uttar Pradesh Working Journalists Union be called "his workmen" nor is there any indication that the individual dispute had got transformed into an industrial dispute. The very basis, therefore, of the reference was bad and must be held to be so."

(ii) In 2004 (4) LLN 753 (Mukesh K.Tripathi v. Senior Divisional Manager, Life Insurance Corporation and others), in para 24, the Honourable Supreme Court held thus,

"... The onus was on the appellant to prove that he is a workman. He failed to prove the same. Furthermore, the duties and obligations of a Development Officer of the Corporation by no stretch of imagination can be held to be performed by an apprentice."

(iii) In the decision of this Court reported in 1993 (1) LLN 169 (Edwin A. Daniel and another v. Labour Court, Coimbatore and another), Justice M.Srinivasan (as he then was) in para 9 held as follows.

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> "9. It is next contended that the Labour Court has exceeded its jurisdiction in traversing beyond the scope of reference. According to learned counsel, the reference is limited to consider the question whether the non-employment of the petitioner is justified and to decide whether he is entitled to any relief. Learned counsel contends that it is not open to the Labour Court to consider the question whether the non-employment of the petitioner is outside the scope of the Industrial Disputes Act and whether the termination of his services fall outside the terms of S.2(oo) of the said Act. I do not agree. The reference is wide enough to include all the incidental questions which arise for consideration. The question referred is undoubtedly "whether the non-employment of the petitioner is justified." While deciding that question, it is open to the parties to contend that the petitioner is not entitled to the benefits of the Industrial Disputes Act."

8. From the decisions cited above, it is clear that the petitioner/Management is entitled to raise the preliminary issue with regard to the status of the second respondent as to whether he is a "workman" or not within the definition of Section 2(s) of the Industrial Disputes Act, 1947, and whenever such a preliminary issue is raised, it is for the Workman to establish that he is a "Workman". Therefore the finding given by the Labour Court based on presumption is unsustainable and the same is to be treated as perverse finding.

9. In view of the said finding, the writ petition is allowed. The impugned order in I.A.No.508 of 1997 in I.D.No.245 of 1988 dated 26.11.1997 is hereby set aside. The matter is remitted back to the first respondent/Labour Court to arrive at a finding on the preliminary issue before deciding other issues, within a period of two months from the date of receipt of copy of this order.

vr

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

The Presiding Officer,
I Additional Labour Court, Chennai.

+ 1 cc to Mr. A. R. Gokulnath, Advocate SR No. 37346

+ 1 cc to Mr. T.S. Gopalan, Advocate SR No. 37289

Order in
W.P.No.8471 of 1998

GGK(CO)
SR/31.8.2006

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